

Public Law 99-545
99th Congress

An Act

To authorize the Secretary of Agriculture to issue permanent easements for water conveyance systems in order to resolve title claims arising under Acts repealed by the Federal Land Policy and Management Act of 1976, and for other purposes.

Oct. 27, 1986
[H.R. 2921]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) For purposes of this Act, the term "the Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761).

(b) Section 501 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ('National Forest Lands'), constructed and in operation or placed into operation prior to October 21, 1976, if—

"(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;

"(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;

"(C) the use served by the water system is not located solely on Federal lands;

"(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;

"(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;

"(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and

"(G) the applicant submits such application on or before December 31, 1996.

"(2)(A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issu-

Public lands.

43 USC 1701
note.
43 USC 1761.

National Forest
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Agriculture and
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commodities.
Animals.

Grants.

ance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.

“(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the holder or change in ownership of the facilities.

“(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.

“(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.

“(3)(A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 506 of this Act. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.

“(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power or authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.

“(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.

“(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section.”

(c) Section 501 of the Act is amended by adding at the end of subsection (b) the following paragraph:

“(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.”

SEC. 2. Section 504 of the Act is amended by—

Agriculture and
agricultural
commodities.
Animals.
43 USC 1766.

Safety.

43 USC 1764.

(1) inserting before the end of subsection (f) "or for emergency repair work necessary for those rights-of-way authorized under section 501(c) of this Act."; and

Ante, p. 3047.

(2) striking out the first sentence of subsection (g) and by inserting in lieu thereof the following: "The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder."

Approved October 27, 1986.

LEGISLATIVE HISTORY—H.R. 2921:

HOUSE REPORTS: No. 99-554, Pt. 1 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 132 (1986):

May 7, considered and passed House.

Oct. 9, considered and passed Senate.